

LCESsANp

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

21 CR 545 (PAE)

5 ARFHY SANTOS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 December 14, 2021
3:45 p.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13
14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the
Southern District of New York

17 CHRISTOPHER D. BRUMWELL

Assistant United States Attorney

18 LAWRENCE M. FISHER

19 Attorney for Defendant

LCESsANp

(Case called

THE DEPUTY CLERK: Please state your appearance for
the record.

MR. BRUMWELL: Good afternoon, your Honor.

Christopher Brumwell for the government

THE COURT: Good afternoon, Mr. Brumwell.

MR. FISHER: Good afternoon, your Honor. Lawrence
Fisher, 233 Broadway, for Mr. Santos.

THE COURT: Good afternoon, Mr. Fisher.

And good afternoon to you, Mr. Santos.

THE DEFENDANT: Good afternoon, Judge.

THE COURT: You may all be seated.

Good afternoon, as well, to the members of the public
who are here.

Mr. Fisher, are these friends or family of your
client's?

MR. FISHER: Yes.

THE COURT: All right. Welcome. Thank you for being
here.

All right. Mr. Fisher, I have been informed that your
client wishes to plead guilty to Count One of an information to
be filed.

Is that correct?

MR. FISHER: Yes.

THE COURT: All right. I understand as well that the

LCESsANp

1 plea is pursuant to a plea agreement.

2 Is that correct, Mr. Fisher?

3 MR. FISHER: Yes, sir.

4 THE COURT: All right. I'm going to, counsel, have
5 handed up the plea agreement. I'm going to mark it as
6 Government Exhibit 1. And during the course of today's
7 proceeding, I'll ask counsel and the defendant about the plea
8 agreement a little later on.

9 Mr. Santos, is it correct that you intend to plead
10 guilty to Count One of the information pursuant to a plea
11 agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Before I accept your guilty
14 plea, I'm going to ask you certain questions so that I can
15 establish to my satisfaction that you wish to plead guilty
16 because you are guilty and not for some other reason.

17 If you don't understand any of the questions or you
18 would like a further opportunity to consult with Mr. Fisher,
19 will you please let me know?

20 THE DEFENDANT: Yes, Judge.

21 THE COURT: Are you able to speak and understand
22 English?

23 THE DEFENDANT: Yes, Judge.

24 THE COURT: Mr. Smallman, would you kindly place
25 Mr. Santos under oath.

LCESsANp

1 (Defendant sworn)

2 OK. Do you understand that you're now under oath, and
3 that if you answer any of my questions falsely, your answers to
4 my questions may being used against you in another prosecution
5 for perjury?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: OK. One moment.

8 Just before we move on, let me just confirm with
9 Mr. Brumwell, the information in this case has already been
10 filed and the defendant has been arraigned on it, correct?

11 MR. BRUMWELL: That's correct.

12 THE COURT: I don't need to take away the proceeding
13 today.

14 MR. BRUMWELL: That's correct, your Honor.

15 THE COURT: All right. Very good. Back to you,
16 Mr. Santos.

17 What is your full name?

18 THE DEFENDANT: Arfhy Santos.

19 THE COURT: How old are you?

20 THE DEFENDANT: 24.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: 11th grade.

23 THE COURT: Where was that?

24 THE DEFENDANT: Clinton High School.

25 THE COURT: Have you ever been treated or hospitalized

LCESsANp

1 for any mental illness?

2 THE DEFENDANT: No.

3 THE COURT: Are you now or have you recently been
4 under the care of a doctor or a psychiatrist?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Have you ever been hospitalized or treated
7 for addiction to any drugs or alcohol?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: In the past 24 hours, have you taken any
10 drugs, medicine or pills, or drunk any alcoholic beverages?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Is your mind clear today?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand what is happening in
15 this proceeding?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Defense counsel, do you have any doubt as
18 to your client's competence to plead at this time?

19 MR. FISHER: No?

20 THE COURT: Government counsel?

21 MR. BRUMWELL: No doubt as to competence. Just one
22 small clarification. I know Mr. Santos recently had surgery,
23 so if the court could ask if he's under any pain medications or
24 anything like that. Just, again, for the sake...

25 THE COURT: Absolutely. Mr. Santos, I gather you

LCESsANp

1 recently had surgery?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: What was that for?

4 THE DEFENDANT: It was for some shots that I received
5 back in 2020.

6 THE COURT: OK. Are you currently taking any
7 medication coming out of the surgery?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: OK. All right. Based on Mr. Santos'
10 responses to my questions and his demeanor as he appears before
11 me, and based on counsel's independent assessments, I find that
12 Mr. Santos is competent to enter a plea of guilty at this time.

13 Mr. Santos, have you had a sufficient opportunity to
14 discuss your case with your attorney?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Have you had a sufficient opportunity to
17 discuss the particular charge to which you intend to plead
18 guilty, any possible defenses to that charge, and the
19 consequences of entering a plea of guilty?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Are you satisfied with your attorney's
22 representation of you, including in connection with reaching a
23 plea agreement?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: I'm now going to explain certain

LCEsSANp

1 constitutional rights that you have. You'll be giving up these
2 rights if you enter a plea of guilty.

3 Under the Constitution and laws of the United States,
4 you are entitled to a speedy and a public trial by a jury on
5 the charge contained in the information.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: At that trial you would be presumed to be
9 innocent and the government would be required to prove you
10 guilty by competent evidence and beyond a reasonable doubt
11 before you could be found guilty. You would not have to prove
12 that you are innocent, and a jury of 12 people would have to
13 agree unanimously that you were guilty.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: At that trial and at every stage of your
17 case, you would be entitled to be represented by an attorney,
18 and if you could not afford one, one would be appointed to
19 represent you free of charge.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: During a trial, the witnesses for the
23 government would have to come to court and testify in your
24 presence. Your lawyer could cross-examine the witnesses for
25 the government, object to evidence offered by the government,

LCESsANp

1 and if you desired, issue subpoenas, offer evidence, and compel
2 witnesses to testify in your behalf.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: At a trial, although you would have the
6 right to testify, if you chose to do so, you would also have
7 the right not to testify, and no inference or suggestion of
8 guilt could be drawn to the fact that you did not testify if
9 that was what you chose to do.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: At trial, the government would have to
13 prove each and every part or element of a charge beyond a
14 reasonable doubt for you to be convicted of that charge.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that if you were
18 convicted at a trial, you would have the right then to appeal
19 that verdict?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Even at this time right now, even as
22 you're in the process of entering this guilty plea, you have
23 the right to change your mind, plead not guilty, and go to
24 trial.

25 Do you understand that?

LCESsANp

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: If you plead guilty and I accept your
3 plea, you'll give up your right to a trial and the other rights
4 that I have just described. There will be no trial, and I will
5 enter a judgment of guilty and sentence you on the basis of
6 your guilty plea after considering the submissions relating to
7 sentencing that I received from you, your lawyer, and the
8 government, as well as a presentence report prepared by the
9 probation department.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: If you plead guilty, you also have to give
13 up your right not to incriminate yourself because today I will
14 ask you questions about what you did in order to satisfy myself
15 that you are guilty as charged.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right. Mr. Santos, you have received,
19 have you not, a copy of the information containing the charge
20 against you?

21 THE DEFENDANT: Yes.

22 THE COURT: Have you read it and discussed it fully
23 with your counsel?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that you're charged in

LCESsANp

1 Count One of the information with the federal offense of being
2 a felony in possession of a firearm?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Government counsel, would you please state
5 the elements that offense.

6 MR. BRUMWELL: The elements are as follows, the
7 defendant knowingly possessed the ammunition as charged.

8 THE COURT: Sorry, Counsel. Just speak a little more
9 clearly into the mic. Thank you.

10 MR. BRUMWELL: I'm sorry, yes.

11 First, that the defendant knowingly possessed the
12 ammunition as charged in the information;

13 Second, at the time he possessed the ammunition, the
14 defendant knew he had previously been convicted of a crime
15 punishable by imprisonment for a term exceeding one year; and

16 Third, that the ammunition was shipped or transported
17 in interstate first.

18 The government would also have to prove by a
19 preponderance of the evidence that venue in this district is
20 proper.

21 THE COURT: All right. Thank you.

22 Do you agree with that recitation, Mr. Fisher?

23 MR. FISHER: Yes.

24 THE COURT: Mr. Santos, did you hear and understand
25 the government as it set out the elements of this offense?

LCESsANp

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that if the government
3 were to go to trial, if you were to go to trial, the government
4 would have to prove each of those elements beyond a reasonable
5 doubt?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: I'm going to turn now to the possible
8 consequences of a guilty plea.

9 Do you understand that the maximum possible penalty
10 for Count One is ten years' imprisonment, and there is no
11 mandatory minimum sentence for this offense?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: The maximum fine for Count One is the
14 greatest of \$250,000, twice the gross pecuniary gain derived
15 from the offense, or twice the gross pecuniary loss to people
16 other than you resulting from the offense.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that for pleading guilty
20 to Count One, you may receive a term of up to three years'
21 supervised release?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Supervised release means that you will be
24 subject to monitoring when you are released from prison. There
25 are terms of supervised release with which you must comply. If

LCESsANp

1 you don't comply with them, you can be returned to prison
2 without a jury trial for all or part of the term of supervised
3 release imposed by the court.

4 Under those circumstances, you would not be given any
5 credit towards that term for the time you served in prison as a
6 result of your sentence for this crime, nor would you
7 necessarily be given any credit towards that term for any time
8 you spent on post release supervision.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: For pleading guilty to this crime, you
12 will be required to pay a mandatory \$100 special assessment.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Government, is this a case in which the
16 government is pursuing either forfeiture or restitution?

17 MR. BRUMWELL: No, your Honor.

18 THE COURT: OK. Do you understand that if I accept
19 your guilty plea and adjudge you guilty, that may deprive you
20 of valuable civil rights, such as the right to vote, the right
21 to hold public office, the right to serve on a jury, and the
22 right to possess any kind of firearm?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Are you a United States citizen?

25 THE DEFENDANT: Yes, your Honor.

LCEsSANp

1 THE COURT: Under current law, there are sentencing
2 guidelines as well as other factors set forth in the sentencing
3 statutes that judges must consider in determining a sentence.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Have you spoken to your attorney about the
7 sentencing guidelines and those other factors?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that the court will not
10 be able to determine the guidelines range that will form one
11 part of my determination of what a reasonable sentence will be
12 in your case until after a presentence report has been prepared
13 and until after you and your attorney and the government have
14 all had an opportunity to challenge any of the facts reported
15 there by the probation officer?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that even though the
18 parties agreed in the plea agreement that the sentencing
19 guidelines recommend a sentence of between 57 and 71 months'
20 imprisonment, the parties' agreement about what the guidelines
21 recommend is not binding on the probation department and it's
22 not binding on the court?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that even after the
25 court has determined what guidelines range applies to your

LCESsANp

1 case, what the sentencing guidelines do recommend, the court
2 has the discretion under the current law to impose a sentence
3 that is higher or lower than the one suggested by the
4 sentencing guidelines?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that if your attorney or
7 anyone else has attempted to predict what your sentence will
8 be, their prediction could be wrong? No one, not your
9 attorney, not the government's attorney, no one can give you
10 any assurance of what your sentence will be because I am going
11 to decide your sentence, and I'm not going to do that now and I
12 really can't do that now. Instead, I'm going to wait until I
13 receive the probation department's presentence report, I'm
14 going to wait until I receive what I know will be thoughtful
15 sentencing submissions from the defense and from the
16 government, and I'm going to read all those materials
17 carefully. I'm going to make my own independent calculation of
18 what the sentencing guidelines recommend. But, most of all,
19 I'm going to determine what a just and reasonable sentence is
20 for you based on all of the factors contained in our sentencing
21 statute, which is known as Section 3553(a).

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand all that?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you discussed these issues and the

LCESsANp

1 other all sentencing process with Mr. Fisher?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Even if your sentence is different from
4 what your attorney or anyone else has told you it might be,
5 even if it's different from what you expect, even if it's
6 different from the advisory guidelines range that is calculated
7 in your plea agreement, you would still be bound by your guilty
8 plea and you would not be allowed to withdraw your plea of
9 guilty.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Has anyone threatened you or anyone else
13 or forced you in any way to plead guilty?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Now, you mentioned earlier that there is a
16 plea agreement in this case, which I've marked as Government
17 Exhibit 1. On the back page, I see here what I understand to
18 be the electronic signatures, Mr. Brumwell, and then a typed
19 authorized signature of Drew Johnson-Skinner, the deputy chief
20 of the Violent and Organized Crimes Unit at the U.S. Attorney's
21 office.

22 Are those the persons' authorized signatures?

23 MR. BRUMWELL: Yes.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: I'm asking the government.

LCESsANp

1 MR. BRUMWELL: Yes, your Honor.

2 THE COURT: All right.

3 THE DEFENDANT: Oh.

4 THE COURT: Mr. Fisher, I see here your signature
5 dated today -- dated yesterday -- no, dated December 9.

6 Is that your signature?

7 MR. FISHER: Yes, sir.

8 THE COURT: And, Mr. Santos, I see here your signature
9 dated December 9. Is that your signature?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: All right. Did you read this agreement
12 before you signed it?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Did you discuss it with your attorney
15 before you signed it?

16 THE DEFENDANT: Yes.

17 THE COURT: Did you believe that you understood the
18 agreement at the time you signed it?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you willingly sign the agreement?

21 THE DEFENDANT: Yes.

22 THE COURT: Did anyone force you to sign it?

23 THE DEFENDANT: No.

24 THE COURT: Do you have any agreement with the
25 government about your plea or your sentence that has been

LCEsSANp

1 omitted or left out of this agreement?

2 THE DEFENDANT: No.

3 THE COURT: Government counsel, would you please
4 summarize the key terms of the plea agreement?

5 MR. BRUMWELL: Yes, your Honor.

6 The agreement, as noted in the guidelines stipulation,
7 is 57 to 71 months' imprisonment. The plea agreement also has
8 the appeal waiver. The defendant agrees to not appeal any
9 sentence within or below the stipulated guidelines range. The
10 government agrees not to appeal any sentence within that range
11 either. There is no forfeiture, and those are the material
12 provisions, your Honor.

13 THE COURT: Thank you.

14 Mr. Fisher, did you hear and understand the government
15 counsel as he summarized those terms?

16 MR. FISHER: Yes.

17 THE COURT: And you're in agreement that those were
18 accurately recited?

19 MR. FISHER: Yes.

20 THE COURT: Mr. Santos, did you hear and understand
21 government counsel as he summarized those terms?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: I just want to highlight one of them.

24 Do you understand that under the agreement, you're
25 giving up your right to appeal or otherwise challenge your

LCEsSANp

1 sentence, so long as I don't sentence you to to more than
2 71 months' imprisonment?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Has anyone made any promise or done
5 anything other than what is contained in the plea agreement to
6 induce you to plead guilty?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Has anyone made a promise to you as to
9 what your sentence will be?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Do you still wish to plead guilty pursuant
12 to this agreement?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right. At this point, I would like
15 you to tell me in your own words what it is that you did that
16 makes you believe you're guilty of Count One in the
17 information.

18 In October 10, 2020, I was in possession of ammunition
19 when previously I've being convicted of a felony.

20 THE COURT: OK. What location were you in when you
21 possessed the ammunition?

22 THE DEFENDANT: In the Bronx.

23 THE COURT: OK. Somebody is brushing against the
24 microphone. Push back. Thank you.

25 You had previously been convicted of a felony. What

LCEsSANp

1 felony was that?

2 THE DEFENDANT: Drugs.

3 THE COURT: Narcotics distribution?

4 THE DEFENDANT: Yes.

5 THE COURT: OK. And that felony carried a potential
6 sentence of more than one year?

7 THE DEFENDANT: No.

8 THE COURT: Not the sentence you received, but the
9 sentence you could have received for the felony you pled guilty
10 to. Did it carry a sentence?

11 THE DEFENDANT: Yes, state court.

12 THE COURT: Let me finish the question.
13 Did it carry a potential sentence of more than one
14 year?

15 THE DEFENDANT: Yes.

16 THE COURT: That's what makes it a felony. I just
17 need to make sure that that is accurate.

18 Is that accurate?

19 THE DEFENDANT: I was -- I was sentenced for --

20 MR. FISHER: No. The judge is just saying the charge
21 itself, you could have gotten one year or more under the law.

22 THE DEFENDANT: Yes, your Honor.

23 MR. FISHER: That's what you could have gotten.

24 THE COURT: Very good.

25 And, government, can you make a proffer to me about

LCESsANp

1 the interstate commerce element of this offense.

2 MR. BRUMWELL: Yes.

3 I can proffer that the ammunition was found and
4 reviewed by law enforcement and that it traveled in interstate
5 commerce.

6 THE COURT: They've determined that it had traveled.
7 Is that because it's not manufactured in New York?

8 MR. BRUMWELL: Yes.

9 THE COURT: Defense counsel, do you agree with that?

10 MR. FISHER: Yes.

11 THE COURT: And, Mr. Santos, do you also agree with
12 that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And so when you possessed that ammunition
15 after having previously been found guilty of a felony, did you
16 know that what you were doing was wrong?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Did you know you were committing a crime?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Government counsel, do you agree that
21 there is now a sufficient factual predicate for a guilty plea?

22 MR. BRUMWELL: Yes, your Honor.

23 THE COURT: Defense counsel, do you agree?

24 MR. FISHER: Yes.

25 THE COURT: Mr. Fisher, do you know of any valid

LCEsSANp

1 defense that would prevail at trial or any reason why your
2 client should not be permitted to plead guilty?

3 MR. FISHER: No.

4 THE COURT: Are you pleading guilty today voluntarily
5 and of your own free will, Mr. Santos, and because you are, in
6 fact, guilty?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And can government counsel represent that,
9 had the case gone to trial, it had sufficient evidence of each
10 element to establish a conviction?

11 MR. BRUMWELL: Yes, your Honor.

12 THE COURT: All right. Mr. Santos, because you
13 acknowledge that you are, in fact, guilty as charged in the
14 information, because I'm satisfied that you know of your
15 rights, including your right to go to trial, because I'm
16 satisfied that you're aware of the consequences of your plea,
17 including the sentence that may be imposed, and because I find
18 that you're voluntarily pleading guilty, I accept your guilty
19 plea and enter a judgment of guilty on the one count to which
20 you've pled guilty.

21 Now, the next important phase of your case will be the
22 sentencing process. I'm going to ask you to pay close
23 attention to what I'm about to say.

24 The probation department is going to want to interview
25 you in connection with the presentence report that it will

LCEsSANp

1 prepare. If you choose to speak with the probation department,
2 please make sure anything you say to them is truthful and
3 accurate. I read those reports carefully. They are often very
4 important, along with the parties' sentencing submissions, in
5 helping me determine what a just and reasonable sentence is in
6 the particular case.

7 You and your counsel have a right to examine the
8 report and to comment on it at the time of sentencing. I urge
9 you to do so, to read it, to discuss it with your attorney
10 before sentencing. If there are any mistakes in the report,
11 will you please point them out to Mr. Fisher so he can bring
12 them to my attention before sentencing?

13 Are you agreeing to do that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Mr. Fisher, I take it this is not a case
16 in which you're seeking an expedited sentence?

17 MR. FISHER: Can I have one moment?

18 THE COURT: Of course.

19 (Counsel confers with defendant)

20 MR. FISHER: We actually would. I've conferred with
21 my client. We would like to try and see if we could get an
22 expedited sentence.

23 THE COURT: OK. I take it you've reviewed with him
24 the federal rule that addresses that subject under which you
25 would be foregoing a draft of the presentence report?

LCESsANp

1 MR. FISHER: Yes, I mean --

2 THE COURT: Have you reviewed that?

3 If you're seeking an expedited sentence, I need to
4 allocute him about that.

5 MR. FISHER: All right.

6 (Counsel confers with defendant)

7 OK.

8 THE COURT: Yes, this is what you would like to do?

9 MR. FISHER: Yes, please.

10 THE COURT: Briefly, Mr. Santos, I just want to
11 explain to you the options that exist with respect to the date
12 of your sentence. There is a federal rule that sets out your
13 right to have a presentence report prepared by the probation
14 department and a timetable for you to see a draft of that
15 report, to comment on the draft, and to see the final report
16 before sentencing.

17 Because of that timetable, sentencing usually is set
18 for about three or three and a half months after the entry of a
19 guilty plea. However, there is another option which would
20 allow me to sentence you in about six to eight weeks. Under
21 this other option, you would still get a complete report
22 prepared by the probation department, but you would only get to
23 see the final report before sentencing. You wouldn't get to
24 see a draft report.

25 Have you discussed these issues with Mr. Fisher?

LCEsSANp

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you wish to have a sentence in
3 approximately six to eight weeks, and give up your right to see
4 the draft report on the timetable set out in the federal rules?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: All right. Hang on a second.

7 (Pause)

8 How about Tuesday, January 25, at 2:30 p.m.?

9 MR. FISHER: That sounds good.

10 THE COURT: Government counsel, does that work for
11 you?

12 MR. BRUMWELL: Yes.

13 THE COURT: Under the circumstances, because the
14 sentencing will be so soon from now, six weeks or so,
15 Mr. Fisher, you need to arrange for your client to be
16 interviewed by the probation department within the next week.

17 Government counsel, you must provide your case summary
18 to the probation department within one week. OK?

19 MR. BRUMWELL: Understood, your Honor.

20 THE COURT: And, given the short timetable, ordinarily
21 I ask for defense submissions two weeks before sentencing and
22 the government's one week before. Instead, I'm going to adjust
23 the dates a little bit.

24 Defense counsel, please get me your sentencing
25 submission by, let's say -- Monday, the 18th, is a holiday.

LCEsSANp

1 Why don't we say Friday, January 15. OK?

2 MR. FISHER: OK.

3 THE COURT: Government counsel, I would like yours by
4 Wednesday, January 20. OK?

5 MR. BRUMWELL: OK.

6 THE COURT: That tightens up the timetable from my
7 review a bit. Gives you enough time to do this.

8 All right. Government counsel, I understand from
9 Mr. Smallman that you do not object to Mr. Santos' continuing
10 to be out on conditions of bail pending sentencing?

11 MR. BRUMWELL: Correct.

12 THE COURT: All right. Then, look, Mr. Santos, do you
13 understand that all of the conditions on which you have been
14 released up until now continue to apply, and that a violation
15 of any of those conditions can have very serious consequences
16 for you at the time of sentence?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that you have to be in
19 this courtroom for sentencing at the time and date that I have
20 set or you will be guilty of a separate crime called bail
21 jumping and subject to a fine and/or prison term in addition to
22 whatever sentence you may receive for the crime to which you
23 have just pled guilty?

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

LCEsSANp

1 THE COURT: All right. Anything further from the
2 government?

3 MR. BRUMWELL: No, your Honor. Thank you.

4 THE COURT: Anything further from the defense?

5 MR. FISHER: No, not at this time.

6 THE COURT: Look, I want to wish everyone here a
7 healthy and happy New Year. I look forward to seeing you in
8 January.

9 THE DEFENDANT: Thank you, your Honor.

10 MR. FISHER: Thank you. You too.

11 (Adjourned)
12
13
14
15
16
17
18
19
20
21
22
23
24
25